

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Oscar Perez-Marquez,

Plaintiff

V.

Joe Lombardo, et al.,

## Defendants

Case No. 2:23-cv-0938-CDS-BNW

## District Court's Response to Ninth Circuit's Referral Notice

[ECF No. 11]

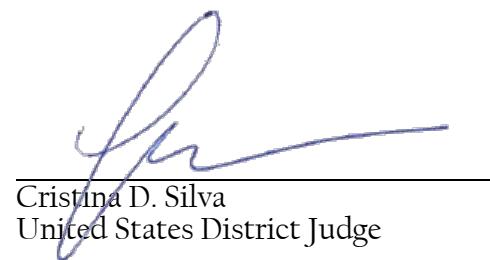
10 The United States Court of Appeals for the Ninth Circuit has referred this matter to me  
11 for the limited purpose of determining whether in forma pauperis status should continue for  
12 Perez-Marquez’s appeal or whether the appeal is frivolous or taken in bad faith. Referral Notice,  
13 ECF No. 11; *see also* 18 U.S.C. §1915(a)(3). The appeal does appear to be frivolous on its face  
14 because Perez-Marquez is appealing my order affirming the magistrate judge’s recommendation  
15 that this case be dismissed (ECF No. 5). I issued that order based on the magistrate judge’s  
16 correct determination that Perez-Marquez’s complaint lacks an arguable basis either in law or in  
17 fact. Any appeal from that order would not be taken in good faith. *Cf. Coppedge v. United States*, 369  
18 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks  
19 review of a nonfrivolous issue).

20 However, because no opening brief has been filed, I am unable to fully determine if the  
21 appeal is frivolous or not. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (an appeal is frivolous if it  
22 lacks any arguable basis in law or fact). Whether that is a sufficient basis to revoke in forma  
23 pauperis status under the language of 18 U.S.C. §1915(a)(3), I leave to the Ninth Circuit to  
24 decide. *Cf. Hooker v. American Airlines*, 302 F.3d 1091 (9th Cir. 2002) (“28 U.S.C. § 1915(a) requires  
25 in forma pauperis status to be authorized for an appeal as a whole and not on a piecemeal basis  
26 by particular claims.”).

1 The Clerk of Court is directed to serve a copy of this response on the parties and the  
2 Ninth Circuit Court of Appeals.

3 Dated: September 18, 2023

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Cristina D. Silva  
United States District Judge